

Inspector General

United States
Department of Defense



Assessment Report May 16, 2011

Review of Office of Deputy Inspector General
for Administrative Investigations, Directorate
for Military Reprisal Investigations

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Executive Summary

On November 1, 2010, the Principal Deputy Inspector General, Department of Defense (DoD), Office of Inspector General (IG) appointed three internal employees to examine the resolution of military reprisal complaints by the Directorate for Military Reprisal Investigations (MRI).¹ The Review Team was provided 169 military reprisal cases selected through random sampling by the Quantitative Methods Directorate (QMD), a subsection of the Audit Component for DoD IG. The sampling population was comprised of cases closed in fiscal year 2010. The Review Team (the Team) was chartered to conduct a qualitative review of each file and either agree or disagree with MRI's decision, solely based on the information contained in the case file. Of the 169 cases selected, the Team agreed with 82 case decisions, disagreed with 74 case decisions, and for the reasons discussed below, did not review 13 cases.

MRI's process classifies their case files in three categories: Declinations, Preliminary Inquiries, and Full Investigations. Based on these categories, the 169 cases were divided as such: 52 Declinations, 98 Preliminary Inquiries, and 19 Full Investigations.

Within these categories, the Team made the following assessment: Of the 52 Declinations, the Team did not assess two cases because they were currently open; of the 50 cases reviewed, the Team disagreed with MRI's decision in 34 cases, or 68%, and agreed with 16 decisions, or 32%. The reasons for disagreeing with MRI's decision can be grouped into four categories: (1) the Team considered letters of reprimand/counseling/instruction to be Unfavorable Personnel Actions (UPA), while MRI did not, unless the letters were placed in the complainant's permanent personnel file; (2) the Team considered threats of UPAs as UPAs while MRI did not. In these cases, when MRI informed the complainants of their decision, they also noted the complainant could re-file if the threat of the UPA was actually carried out; (3) the Team did not think cases should be dismissed at the Declination stage simply because the complainant did not or could not provide documentation to verify all allegations; and (4) the Team disagreed with MRI for other or miscellaneous issues.

Of the 98 Preliminary Inquiries, the Team did not opine on ten cases because eight appeared to be active and under investigation; one involved a contractor, instead of a military member; and in one case, the complainant, through their attorney, filed a rebuttal that was currently under review. Of the 88 cases reviewed, the Team disagreed with MRI's decision in 40 cases, or 45.5%, and agreed with 48 decisions, or 54.5%. The Team's disagreement can be grouped into four categories: (1) the Team considered letters of reprimand, counseling, and Instruction to be a UPA, while MRI did not, unless the letters were placed in the complainant's permanent personnel file; (2) cases were closed without interviewing the Responsible Management Officials (RMO), although the RMO's intent was often assumed. The Team did not think that this approach was proper, and therefore, believes that the RMOs should have been interviewed; (3) the file did not contain sufficient information/documentation to render a decision. There either was a lack of documents or relevant issues were not explored or resolved; and (4) the Team disagreed with MRI for other or miscellaneous issues.

¹ See Appendix A.

Of the 19 Full Investigations, the Team did not render an opinion in one case because it appeared to be a Preliminary Inquiry. Of the 18 cases the Team assessed, it agreed with ten cases, 55.5%, and disagreed with eight cases, 44.5%. The Team's reasoning for disagreement with eight Full Investigations fell into one of three categories: (1) the file was not fully developed, e.g. necessary interviews not conducted or discrepancies not resolved; (2) actions the Team felt were UPAs were not considered UPAs by MRI; and (3) the Team disagreed with MRI for other or miscellaneous issues.

It should be noted that the Team is not stating that 74 cases would have been substantiated had they gone to full investigation. To the contrary, the Team thinks that many of the cases would not have been substantiated; however, the Team could not affirm the decision because the information in the file did not support it.

Introduction

The DoD prohibits reprisal against service members for making or preparing to make a protected communication. Moreover, it is the policy of DoD that members of the Armed Forces shall be free from reprisal for making or preparing to make protected communications, and that no person may take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in reprisal against any member of the Armed Forces for making or preparing to make a protected communication.

The DoD IG, MRI, is responsible for investigating, overseeing, and adjudicating complaints of reprisal from military members. The process MRI follows to investigate and adjudicate complaints of reprisal from military members is governed by 10 U.S.C. § 1034 (LexisNexis 2011) and DoD Directive 7050.06, Guide To Investigating Reprisal And Improper Referrals for Mental Health Evaluation, February 6, 1996, which implements the Statute. The DoD IG has also issued Inspector General Guide (IGDG) 7050.6 to further assist investigating and adjudicating complaints of reprisal from military members.

Standards

10 U.S.C. § 1034, states in section (a)(1) that “[n]o person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.” Furthermore, section (b)(1) states that “[n]o person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing . . .” a protected communication. 10 U.S.C. § 1034 defines a protected communication in section (b)(1)(A) as “a communication to a Member of Congress or an Inspector General that . . . may not be restricted; or” in section (c)(2) “. . . a communication in which a member of the armed forces complains of, discloses information that the member reasonable believes constitutes evidence of, any of the following: (A) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination. (B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”

DoD Directive 7050.06, states: a personnel action is any action taken on a member of the Armed Forces that *affects*, or *has the potential* (emphasis added) to affect, that military member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under DoD Directive 6490.1; and any other significant change in duties or responsibilities inconsistent with the military member's grade. During the review, the Team did not find a definition in the Statute, DoD Directive 7050.6, or the IGDG 7050.06 for the term unfavorable. Therefore, to ensure consistency in the review, the Team utilized the following definition from Webster's II New Riverside University Dictionary (1984): Unfavorable: Negative, adverse, undesirable, and disadvantageous.

10 U.S.C. § 1034, states in section (c)(3)(a) that “An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under section (h), whether there is sufficient evidence to warrant an

investigation.” In conducting the review, the Team could not locate a definition of “sufficient evidence” in the Statute, DoD Directive 7050.06, or the IGDG 7050.6 Reference Guide for conducting Military Reprisal Investigations. Therefore, to ensure consistency while reviewing the cases, the Team developed their own. In developing this working definition, the Team consulted Black’s Law Dictionary, Fifth Edition, 1979, that contained the following definition:

“sufficient evidence” adequate evidence; such evidence, in character, weight, or amount as will legally justify the judicial or official action demanded; according to circumstances, it may be “prima facie” or “satisfactory for the purpose; that amount of proof which ordinarily satisfies an unprejudiced mind, beyond a reasonable doubt.” The term is not “conclusive” but may be used interchangeably with the “weight of evidence.”

The final working definition agreed to and used by the Team was: sufficient evidence the facts justify a full investigation of a Military Whistleblower Complaint of Reprisal. Proof must include a protected communication, followed by an unfavorable personnel action, or withholding a favorable action, or a threat of either, and the facts indicate that the responsible official had knowledge of the protected communication (or suspected/believed one was made) before an action was taken or withheld. In addition, the Team determined that in order to assess whether a case file contained sufficient evidence, the Investigator must have obtained testimony or a statement from the responsible management official.

10 U.S.C. § 1034, states in section (e)(4) that “the report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.” DoD Directive 7050.06, 5.1.6. states:

Issue a report of investigation within 180 days of the receipt of an allegation of reprisal and/or restriction investigated by the IG DoD. The report of investigation shall include a thorough review of the facts and circumstances relevant to the allegation(s), relevant documents acquired during the investigation, and summaries or transcripts of interviews conducted. The report may include a recommendation(s) as to the disposition of the complaint. If a determination is made that the report cannot be issued within 180 days, notify the Deputy Under Secretary of Defense for Program Integration (DUSD(PI)), under the Under Secretary of Defense for Personnel and Readiness, and the member or former member of the reasons for the delay and when that report will be issued.

The IGDG 7050.6, 2-13, states, in pertinent part, that conclusions be based on the administrative evidentiary standard of a preponderance of the evidence. The Team notes that the Statute, DoD Directive 7050.06, and IGDG 7050.6 do not define “preponderance of the evidence.” Therefore, the Team utilized the following definition from Black’s Law Dictionary, Fifth Edition, 1979 to ensure consistency of our review: “Preponderance of the Evidence - Evidence which is of greater weight or more convincing than the evidence which is offered in

opposition to it; that evidence which as a whole shows that the fact sought to be proved is more probable than not.” The Team noted, however, that while the above authorities and guidance do not define the aforementioned standard, IGDG 7050.6, 2-13 does state the following with respect to a preponderance of the evidence: “In other words, give greater weight to the evidence which you find most credible, most convincing, and that which demonstrates to the reader that it is more probable than not that the facts and circumstances occurred as set forth in the report. Do not use the criminal evidentiary standard of ‘beyond a reasonable doubt.’”

MRI's Process

Based on the review of the files, the Team determined that Service members may file a reprisal complaint directly to the DoD IG Hotline, or with a Service IG. If a complaint is filed with a Service IG, the Service IG must notify MRI within ten working days of receipt of the complaint, and MRI will review and concur/non-concur on the Service IG's disposition of the complaint. In the event that a complaint is filed directly with the DoD IG Hotline, Hotline will receive the complaint and then will forward it to MRI. MRI then conducts an initial assessment to determine whether the complaint warrants an investigation. In conducting their review of complaints, MRI employs an “acid test” that is articulated in IGDG 7050.6, 2-1. This guide states that an investigator must gather enough evidence to answer four questions in order to complete a thorough military reprisal investigation. The questions are:

- 1 Did the military member make or prepare a communication protected by statute?
2. Was an unfavorable personnel action taken or threatened, or was a favorable action withheld or threatened to be withheld following the protected communication?
3. Did the official(s) responsible for taking, withholding, or threatening the personnel action know about the protected communication?
4. Does the evidence establish that the personnel action would have been taken, withheld, or threatened if the protected communication had not been made?

The Director of MRI conducts this initial review which may result in an immediate declination and closure, or a request back to the complainant for more information.² If there is a determination more information is needed, the communication with the complainant is made through the Hotline and not by MRI. If the requested information is received, Hotline will forward the supplemental information to MRI and the initial review will be continued; this can result in a declination of the complaint or progression to Preliminary Inquiry. If the complaint is declined, the complainant will be notified by Hotline; if the case progresses to a Preliminary Inquiry, it will either be assigned to an MRI investigative team or a Service IG.

During the Preliminary Inquiry stage, a case investigator will interview the complainant and other witnesses as appropriate, obtain additional documentation from the complainant and command sources, and then make a determination as to whether the case should proceed to the

² In mid-2010, MRI changed their procedures, and the initial review is no longer solely conducted by the Director, but by two of the Team Chiefs.

Full Investigation stage. During a Full Investigation, a determination is made as to whether the facts support, by a preponderance of the evidence, that reprisal did or did not occur.

Under the Statute, DoD Directive 7050.06, and IGDG 7050.6 this four step process is not required. Instead, the Statute, DoD Directive 7050.06, and IGDG 7050.6 only require that a case contain sufficient evidence of reprisal to warrant a full investigation.

Objectives

The Team was organized to only assess the conclusions reached by the MRI Directorate on 169 military whistleblower reprisal complaints that were closed during fiscal year 2010 and identify any investigator bias. While the charter indicates that the Team will assess whether the conclusions are supported by sufficient evidence, no such standard existed for application to the four stages of the investigative process followed by MRI; as such, the Team devised its own definitions as described in the Standards section of this report. A detailed discussion of the Team's methodology will be included in the following section.

Scope and Methodology

The Team evaluated military whistleblower reprisal complaints that were closed in fiscal year (FY) 2010. MRI closed 534 cases in FY2010.³ These cases were in three categories: (1) 110 Declination cases, (2) 305 Preliminary Inquiry cases, and (3) 119 Full Investigation cases. Based on the overall universe of 534 cases, QMD devised a sampling plan for each of the three categories.⁴ Based on the results of the sampling, the Team assessed: 52 Declinations, 98 Preliminary Inquiries, and 19 Full Investigations. Each case was reviewed independently by each Team member, and then consensus was reached amongst the Team as to whether the Team agreed or disagreed with MRI's disposition of each case. During the consensus meetings, the Team normally required little or no discussion to reach consensus. In fact, for an overwhelming majority of the cases, the Team reached the same conclusion independently. The Team based its decisions solely on the files that were provided by MRI. The Team did not interview MRI staff or staff from the Service IG offices.⁵ Prior to launching the review, the Team received training on the MRI process from MRI.⁶

Discussed below is the methodology utilized for each of the three categories of cases. Declinations - The Team applied the statute, the DoD Instruction, and the MRI guidebook to make independent decisions as to whether the complaint should have proceeded to the Preliminary Investigation stage. The Team did not evaluate or comment on whether the Team thought the complaint had merit to be substantiated, only if it met the initial "acid test" and should have proceeded to the next stage in the process. Preliminary Inquiries - At this stage, the Team agreed or disagreed with MRI's decision whether the case contained "sufficient evidence"

³ This number, and the population used for the sampling process, was provided by QMD; however, during the "kick-off meeting" MRI slide #4 cited 679 complaints were closed. See Appendix B.

⁴ QMD's methodology is explained in Appendix C.

⁵ One MRI staff member approached the Team unsolicited, requested to speak with the team and was accommodated. However, the discussion occurred after all cases had been reviewed and the analysis had been completed.

⁶ The training slides are attached at appendix D.

to proceed to full investigation or not.⁷ Full Investigations - The Team analyzed all the evidence contained in the file and agreed or disagreed with MRI's conclusion as to whether or not allegations of reprisal were substantiated. In determining whether or not reprisal occurred, the Team utilized the legal standard of a preponderance of the evidence.⁸

Observations

The Team organized its observations in accordance with MRI's three categories of cases: Declination stage, Preliminary Inquiry stage, and Full Investigation stage. Below are the observations by stage.

Declination Stage

For this category, the Team was provided 52 sample cases that were closed in Fiscal Year (FY) 2010. The Team notes that two cases in the sample appeared to be active, and therefore, the Team did not assess these cases. Of the 50 cases reviewed,⁹ the Team disagreed with MRI's decision in 34 cases, and agreed with 16 decisions. Of the cases the Team disagreed with, the Team categorized its observations into three main areas discussed below, and an "other" category. There were 12 cases in the other category and MRI declined the cases for various reasons with which the Team disagreed. The Team also noted that some cases were declined for multiple reasons; so they fell into more than one of the following categories.

1. Letters of reprimand, counseling, and instruction that were issued after a protected communication was made, and held locally, were not considered unfavorable personnel actions under 10 U.S.C. §1034.

MRI declined to further investigate cases of military whistleblower reprisal because letters of reprimand, counseling, or instruction that were locally held were not considered unfavorable personnel actions. The Team disagreed with this analysis. DoD Directive 7050.06 states: a personnel action is any action taken on a member of the Armed Forces that *affects, or has the potential* (emphasis added) to affect, that military member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under DoD Directive 6490.1; and any other significant change in duties or responsibilities inconsistent with the military member's grade. Of the cases the Team reviewed, several contained Letters of Counseling (LOC) that stated additional action may be taken against the member including separation, if the subject behavior continues. Moreover, Air Force Instruction, 36-2907, 3.1.1 and 3.1.2., June 17, 2005, states that raters must take into account locally held LOCs. The Team did not locate similar instructions for the remaining Services; however, the Team determined that the letters should be reviewed not summarily dismissed.

⁷ The Team used the definition of "sufficient evidence" as described in the Standards section of this report.

⁸ The Team used the definition of "preponderance of the evidence" as described in the Standards section of this report.

⁹ The details of each case decision in this stage can be found in Appendix E.

Based on the plain language of the DoD Directive 7050.06, letters of counseling, reprimand and instruction are personnel actions that have the potential to affect the member's current position or career. Moreover, despite being locally held, letters of counseling, reprimand, or instruction could be used in a later action, as discussed above, and have the potential to affect the service member's current position or career. Consequently, the Team disagreed with MRI's decisions. The Team disagreed with MRI's decision in 34 cases in the declination stage; for 10 of the 34 cases, the Team disagreed because letters of reprimand, counseling, or instruction that were locally held were not considered unfavorable personnel actions.

2. Cases were declined because a member only received a threat of an unfavorable personnel action, or could challenge an underlying action in another forum.

MRI declined to further investigate cases where a member received a threat of an unfavorable personnel action and/or because an action could be challenged in another forum. 10 U.S.C. § 1034 states that "[n]o person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action. . . ." In some of the cases the Team reviewed, members were threatened with negative fitness reports, termination, and court martial proceedings. Rather than allow the complaint to proceed to the next stage in the process, MRI instructed the member that if the action occurs, they could file their complaint again, and thus declined the complaint.

The Team considered these threats to be threats of unfavorable personnel actions. Therefore, these cases should not have been declined because the member only received a threat of an unfavorable personnel action; this is contrary to 10 U.S.C. § 1034.

MRI also declined a case because the member could challenge the action in another forum; these examples included suspension of medical credentialing, surgical privileges, and professional privileges. Based on our review there is no statutory authority, DoD Directive, or IG Instruction to decline a complaint of reprisal from a military member because the member could challenge the underlying action in another forum. In addition, there is also no statutory authority to decline a complaint because a member has challenged the underlying action in another forum. Therefore, the Team disagreed with MRI's decision in this case. The Team disagreed with MRI's decision in 34 cases in the declination stage; for eight of the 34 cases, the Team disagreed because threats of UPA's were not considered and because a member could challenge the action in another forum.

3. Cases were declined for lack of documentation or details submitted by the member supporting the allegation of a protected communication and unfavorable personnel action.

MRI declined to further investigate cases because complainants did not provide hardcopy documentation of the alleged protected communication(s), unfavorable personnel action(s), or documentation that the responsible official was aware of the protected communication prior to implementing an unfavorable personnel action. DoD Directive 7050.06, Enclosure 3, E3.1.3.2 states: that a complaint should include "[a] copy of the protected communication and any reply about the matter. If a copy is not available, include the date of the protected communication; to whom the protected communication was made; the content of the protected communication; and

whether the matter was investigated, when, and by whom.” Furthermore, as for personnel actions, “[i]dentify the personnel action(s) . . . taken, withheld, or threatened to be taken or withheld. Provide documentation for the personnel action. If unavailable, describe the personnel action and the date of the action.” *Id.* at E3.1.3.3.

IGDG 7050.6, 2-4 states that if the documentation is insufficient, contact the appropriate official to whom the protected communication was made and obtain any testimony or documents necessary to show whether a protected communication was made. This guidance also states that if unable to establish with any certainty that the complainant made or prepared a protected communication, give the whistleblower the benefit of the doubt and proceed with the investigation. *Id.*

As mentioned above, the complaints in this category were received through the DoD IG Hotline. This means that complainants filed their complaints by contacting the Hotline number, or utilizing the automated system. With either avenue, the complainant provides information about the allegation(s) of reprisal, and a form is forwarded to MRI for processing. The option of using an automated complaint system and discussing the matter over the phone is inconsistent with a requirement to provide documentary evidence at this stage. In these cases we disagree with MRI that the complainant did not provide sufficient specificity for the complaint to proceed to the next stage. In at least one case, the complainant was deployed in a combat zone; requiring this individual to provide documentation appears to be contrary to the intent of the statute and DoD policy.

Based on the DoD Directive and DoD IG guidance, it is reasonable to expect that not all complaints submitted will contain all the documentation to prove allegations of reprisal. Rather, the investigator should obtain this documentation during the investigation. Furthermore, placing the burden of supplying documentation of the protected communication or unfavorable personnel action at the filing stage could be onerous for a complainant, especially while in a deployed environment. For these reasons, the Team disagrees with the practice to close complaints based on the complainant’s failure to provide all requested documentation during this initial phase. The Team disagreed with MRI’s decision in 34 cases in the declination stage; for 15 of the 34 cases, the Team disagreed because MRI required complainants to provide documentation of the alleged protected communication(s), unfavorable personnel action(s), or documentation that the responsible official was aware of the protected communication prior to implementing an unfavorable personnel action.

Preliminary Inquiry Stage

For this stage of the review, the Team assessed MRI’s decision on whether the cases contained “sufficient evidence” to warrant a full investigation.¹⁰ During this stage, the Team was provided 98 randomly selected cases from FY 10 that were closed at the Preliminary Inquiry stage. Of the 98 cases, 74 were processed by Service IGs and forwarded for MRI’s concurrence and 24 were processed by MRI. The Team noted that although included in the Preliminary Inquiry sample, some of the 74 cases investigated by the Service IGs appeared to be Declinations. The Team accounts for this by the fact that the three stage process appears to be

¹⁰ The Team used the definition of “sufficient evidence” as described in the Standards Section of this report.

unique to MRI. Also, of the 98 cases, eight appeared to be active and at the Full Investigation stage, one involved a contractor (instead of a military member), and one was being rebutted. Therefore, the Team did not assess MRI's disposition of these ten cases.

Of the 88 cases the Team decided, the Team disagreed with MRI's decision in 40 cases and agreed with 48 decisions.¹¹ While the numbers below will capture statistics for the entire sample, it is of note that of the 24 cases for which MRI had sole responsibility, eight of them were included in the aforementioned category of being open or active, involving a contractor, or being rebutted. For the 16 cases the Team did evaluate, the Team disagreed with MRI's decision in ten of them and agreed with six. Of the cases the Team disagreed with, the Team categorized its observations into three main areas discussed below and an "other" category. In the other category, cases were declined for various reasons for which the Team disagreed and there were eight cases in this category. The Team also notes that some cases fell into more than one category for disagreement.

1. Letters of reprimand, counseling, and instruction that were issued after a protected communication was made, and held locally, were not considered unfavorable personnel actions under 10 U.S.C. § 1034.

MRI declined to further investigate cases of military whistleblower reprisal because letters of reprimand, counseling, or instruction that were locally held were not considered unfavorable personnel actions. The Team disagreed with this analysis. DoD Directive 7050.06, states: a personnel action is any action taken on a member of the Armed Forces that *affects, or has the potential* (emphasis added) to affect, that military member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under DoD Directive 6490.1; and any other significant change in duties or responsibilities inconsistent with the military member's grade. Of the cases the Team reviewed, several contained LOCs that stated additional action may be taken against the member including separation, if the subject behavior continues. Moreover, Air Force Instruction, 36-2907, 3.1.1 and 3.1.2., June 17, 2005 states that raters must take into account locally held LOCs. As previously stated, the Team did not locate similar instructions for the remaining Services; however, the Team determined the letters should be reviewed not summarily dismissed.

Therefore, based on the plain language of the DoD Directive 7050.06, letters of counseling, reprimand, and instruction are personnel actions that have the potential to affect the member's current position or career. Moreover, despite being locally held, letters of counseling, reprimand, or instruction could be used in a later action, as discussed above, and have the potential to affect the service member's current position or career. Consequently, the Team disagreed with MRI's decisions. The Team disagreed with MRI's decision in 40 cases in the Preliminary Inquiry stage; for eight of the 88 cases, the Team disagreed because letters of reprimand, counseling, or instruction that were locally held were not considered unfavorable personnel actions.

¹¹ The details of each case decision in this stage can be found in Appendix F.

2 Cases were closed without obtaining a statement or any facts directly from the responsible management official.

MRI declined to refer cases for full investigation without obtaining a statement from the RMO. This is contrary to IGDG 7050.6. IGDG 7050.6, 2.5 Knowledge by RMO (“Acid Test” Question 3) “Ask each responsible management official:

1. When and how did you first become aware that the complainant made or prepared a protected communication?; and
2. When and how did you first suspect or come to believe that the complainant made or prepared a protected communication?”

The IGDG 7050.06 requires that the RMO be interviewed, or at a minimum, documentation in the file must enable an assessment of RMO knowledge of the protected communication and the motivation for the action s/he took, withheld, or threatened. The guide further states:

If anyone of the responsible management officials knew or suspected that the complainant made or prepared the protected communication before the action was taken, withheld or threatened, then the investigation must continue. If there is no evidence that any responsible management official who recommended, took, or approved the personnel action knew or suspected that the complainant made or prepared a protected communication before deciding to take or taking the action, then the investigator may terminate the investigation. If the evidence is insufficient to determine who knew what and when, give the benefit of the doubt to the complainant and proceed with the investigation. *Id.*

In several cases, the investigators’ summaries had to assume why management took the alleged action, because interviews or statements were not obtained.

In applying the standard for sufficient evidence, the Team concludes that it cannot be determined whether there is sufficient evidence to warrant a full investigation without obtaining a statement from the responsible management official(s). Therefore, the Team disagreed with MRI’s decisions in these cases. The Team disagreed with MRI’s decision in 40 cases in the Preliminary Inquiry stage; for 27 of the 88 cases, the Team disagreed because the files did not contain a statement from the RMO.

3. The file did not contain sufficient information/documentation in order for the Team to render a decision. There either was a lack of documents or relevant issues were not explored or resolved.

MRI found in these cases that there was not sufficient evidence to warrant a full investigation. In the review of these cases, the Team opined that the content of the file was insufficient in order to draw such conclusions.

In several cases there were no documents detailing the complaint or investigation - only a document indicating an investigation had been conducted by DoD IG, Investigations of Senior Officials (ISO) Directorate. In another case, there were documents from the original complaint in 2005, but no other documents indicating the matter had been investigated. Some of the files provided details of the investigation; however, central issues or conflicts raised during the investigation were not addressed or resolved. One example is a case in which a Temporary Duty (TDY) assignment was deemed not to be a UPA although no apparent evaluation of the TDY was conducted to determine whether it would affect the member's career. In another example, an Officer Evaluation Report (OER) was deemed not to be a UPA when the file clearly stated the member was denied a NATO job based solely on the OER. Since the information in the file did not support MRI's decision, the Team disagreed with the MRI decisions. The Team disagreed with MRI's decision in 40 cases in the Preliminary Inquiry stage; for eight of the 88 cases, the Team disagreed because the file did not contain sufficient information/documentation in order for the Team to render a decision.

Full Investigation Stage

For the final stage in the process of investigating military reprisal complaints, the Team determined whether they agreed or disagreed with MRI's decision as to whether, by a preponderance of the evidence, reprisal was the reason for the action taken, withheld, or threatened by the RMO.¹² For this stage, the Team received 19 sample cases from FY 2010 that were fully investigated. Of those 19 cases, the Team did not review one case because it appeared to be a case more properly in the Preliminary Inquiry stage, and not the Full Investigation stage.

Of the 18 cases actually reviewed, the Team disagreed with MRI's decision in eight cases, and agreed with ten decisions.¹³ Of the cases the Team disagreed with, the Team categorized its observations into two main areas discussed below, and an "other" category. In the other category, there was one case the Team disagreed with, and it involved an allegation of restriction under 10 U.S.C. § 1034.

The file did not contain sufficient information/documentation in order for the Team to render a decision.

At the conclusion of an investigation, the investigator must analyze the evidence collected during the investigation and determine, by the administrative evidentiary standard of a preponderance of the evidence, whether reprisal was the reason for the action taken, withheld, or threatened. As discussed earlier in this report, IGDG 7070.6, 2-13 provides guidance to interpret the standard of preponderance of the evidence, but it does not provide for a clear definition. Therefore, the Team utilized the definition stated in the Introduction section of this report in reviewing MRI's conclusions.

In reviewing the cases under this observation, the Team disagreed with MRI's decision that reprisal was not substantiated because the investigative report was not thoroughly developed to

¹² The Team used the definition of "preponderance of the evidence" as described in the Standards Section of this report.

¹³ The details of each case decision in this stage can be found in Appendix G.

allow one to determine, by a preponderance of the evidence, whether reprisal occurred. For example, in one case, a RMO claimed they issued the UPA based on an opinion by a Judge Advocate General Officer; however, this officer was never interviewed. The Team found this gap created unanswered questions and resulted in the file not supporting the decision. In another case, three RMOs were not interviewed. All three of these RMOs were involved in either the evaluation or the letter of reprimand writing process. Not interviewing these RMO's left many unanswered questions. The Team determined that without these crucial interviews, there was not enough information to affirm MRI's decision of unsubstantiated reprisal.

In two other cases, conflicts in the RMO's testimony were never resolved, and additional relevant interviews or follow-up interviews were never conducted. Consequently, the decision by MRI could not be supported. As a result of this missing crucial information, the Team could not determine, by a preponderance of the evidence, whether or not reprisal occurred, and thus disagreed with MRI's decisions in these cases. The Team disagreed with MRI's decision in eight cases in the Full Investigation stage; for five of the 18 cases, the Team disagreed because the file did not contain sufficient information/documentation in order to render a decision.

2. Actions taken by the responsible management official were not considered unfavorable personnel actions by MRI.

For these cases the Team disagreed with MRI's decision because actions taken by RMOs were not considered UPAs. The Team determined, however, that these actions did qualify as UPAs under the Statute. DoD Directive 7050.06 states that a personnel action is any action taken on a member of the Armed Forces that *affects*, or *has the potential* (emphasis added) to affect, that military member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under DoD Directive 6490.1; and any other significant change in duties or responsibilities inconsistent with the military member's grade.

Of the cases the Team reviewed, one contained LOCs that stated, additional action may be taken against the member including separation if the subject behavior continues. MRI did not consider those LOCs as UPAs and did not address those LOCs in the case analysis. Similarly, in another case, a forced transfer was not considered a UPA and was not addressed in the case analysis.

Based on the plain language of the DoD Directive 7050.06, letters of counseling, reprimand and instruction are personnel actions that have the potential to affect the member's current position or career. Despite being locally held, letters of counseling, reprimand, or instruction could be used in a later action, as discussed above, and have the potential to affect the service member's current position or career. Moreover, it is also clear that a transfer is considered a personnel action. Therefore MRI should have considered the LOCs and transfer as a UPA and investigated them. For this reason, the Team disagreed with MRI's decision that reprisal was not substantiated. The Team disagreed with MRI's decision in eight cases in the Full Investigation stage; for two of the 18 cases, the Team disagreed because actions taken by the RMO were not considered UPAs.

Conclusion

Of the 169 military whistleblower reprisal complaints provided to the Team, 13 were not reviewed due reasons articulated in each of the previous sections. Of the 156 reviewed by the Team the Team agreed with 82 of the decisions reached by MRI, and disagreed with 74. This does not mean that the Team thought that 74 cases would have been substantiated had they gone to full investigation. To the contrary, the Team believes that many of the cases would not have been sustained; however, The Team could not affirm the decision because the information in the files did not support it or necessary investigative steps were not completed.

In addition to the actual investigative process, another concern is related to case tracking. For example 11 of the 169 cases appeared to be open when they were coded as closed. Additionally, several of the cases in which the Team agreed with MRI's decision were instances where the complainant had withdrawn their allegation. The Team's concern is the withdrawal may be directly related to the length of time it took to address their complaint. In a few cases the allegation was substantiated, but the RMOs had already left the service. The Team thinks the misidentified cases and the length of time taken to complete investigations may be indicative of a larger issue dealing with tracking and management of complaints.

The Team believes that if the report recommendations are implemented, cases could be concluded with minimal additional work, and the ultimate decision would be more supportable. Moreover, the Team believes the implementation of the report recommendations would improve the overall process and better serve DoD.

Recommendations

1. Establish written procedures for handling and investigating reprisal complaints and update IGDG 7050.6 and DoD Directive 7050.06 accordingly. Develop definitions for key terms (e.g. sufficient evidence) to ensure consistency and objectivity in processing cases.
2. Complaints that involve locally held letters of reprimand, counseling, or instruction should not be summarily dismissed. Instead, the complaint and the letters of reprimand, counseling, or instruction should be reviewed to determine whether it affects, or has the potential to affect the Service member's current position or career.
3. Require that the RMO(s) be interviewed prior to making a determination as to whether there is sufficient evidence to warrant a full investigation or whether reprisal occurred by a preponderance of the evidence.
4. Conduct an internal audit of case tracking/file system(s) for MRI complaints to ensure complaints are processed in a timely manner and accurately tracked and managed.
5. Require that MRI files concerning military reprisal complaints investigated by the Directorate for ISO contain the entire file developed by ISO, including transcripts of all interviews.

6. Implement procedures to comply with statutory and regulatory notification requirements when exceeding the 180 day limit. During the review, the Team noticed many cases that exceeded the allowable time limit, but saw no indication that the member or the Deputy Under Secretary of Defense for Program Integration, Office of the Under Secretary of Defense for Personnel and Readiness, were notified as required.

Declination

Sheet #	Hotline Number	MRI Reason for Declining	Agree/Disagree	Review Team Reason	Other	**Categories for Disagreement
1	112704	LOI filed locally is not a UPA	Disagree	LOI is a UPA		1
2	113582	LOR filed locally is not a UPA	Disagree	LOR is a UPA		1
3	113906	An investigation and harsh punishment are not a UPA	Disagree	Actions taken as a result of an investigation are a UPA		4
4	113472	Current issue is related to Jun '09 complaint; that was declined because of performance issues prior to PC	Disagree	Derogatory NCOER is a UPA		4
5	114268	LOC not UPA; no documentation of UPA	Disagree	Lack of documentation/information is not basis for declination. LOC is an UPA.	MRI decision partially based on previous complaint, but that complaint was not included in file	1,3
6	114592	No PC	Agree	N/A		
7	114493	Alleged PC but no details provided and didn't explain how RMO would know about it.	Disagree	Lack of documentation/information is not basis for declination		3
8	114500	No UPA; LOI documents events and is not in permanent record	Disagree	LOI is a UPA		1
9	114720	LOC and counseling not UPA	Disagree	LOC is a UPA		1
10	114700	Not enough info; complainant didn't respond to request for more info	Agree	N/A	email only contact w/ complainant; did it get there?	
11	113957	No PC; MHE referral w/in reg	Agree	N/A		
12	114806	Command's order for JAG not to assist complainant is not UPA	Agree	N/A		
13	114832	No PC based on contact w/ chain of command over assignment issue	Disagree	Contact w/ IG is a PC regardless of topic and threatened termination is a UPA		2,4
14	114927	No evidence PC is connected to current issue	Disagree	Connection of PC to UPA is not needed at this stage		4
15	115084	No UPA	Agree	N/A		
16	114978	Counseling and investigation not UPA; MRI doesn't do medical credentialing/privileges issues	Disagree	Suspension of clinical privileges is a UPA.	Arbitrarily limiting statute is not appropriate	2,4
17	107248	Prelim inquiry in '08 closed due to complainant non-responsiveness; current issue no UPA	Agree	N/A	Subsequent allegation should have been handles as separate case	
18	115066	Not enough info; complainant didn't respond to request for more info	Agree	N/A	Concerned email is not productive method for contact w/ complainant	
19	115392	No UPA articulated; appears to be same issue at '09 complaint but PC is unclear	Agree	Agree; however, previous complaint should have been summarized since it was basis for decision.		
20	115384	Disagreeing with CO over non-endorsement of another officer was not a PC; counseling not UPA	Disagree	PC was abuse of authority and violation of rule allegations; LOC and adverse FITREP are UPAs		1,4
21	114577	Not timely filed; MRI will not pursue medical privileges/credential because other avenues exist	Agree	Agree not timely; however, concerned about declining based on other due process/appeal options for complainant		
22	115381	Complainant is a drilling reservist and most allegations relate to AD orders; NCOER is not adverse	Disagree	NCOER is adverse and a UPA. Denial of training is UPA	Lack of specificity of information provided was not clarified	4
23	114401	Should be addressed by Command; not timely; and no RMO identified. Navy's response to Congress was sufficient; FITREP was only for three months.	Disagree	RMOs don't need to be identified at this stage; complaint was timely; lengthening of FITREP is irrelevant.		3,4
24	115595	Not timely filed.	Agree	N/A	Timeliness can be waived; the fact there was no PC is the best reason for declination	

Declination

25	115649	No PC; complainant's opinion about classroom instruction doesn't meet the level of a PC	Disagree	Alleging chain not following rules is a PC; dismissal from class is a UPA; validity should be determined at next stage		4
26	115759	An investigation is not a UPA	Disagree	PC was complaint to chain; UPA was suspension	Complainant sought reconsiderations via email; no indication of response or action	4
27	115700	Appears to be an EO complaint. No UPA; flag is required if under investigation	Disagree	PC was EO complaint; UPA was threat of UCMJ action	Complainant also contacted HL in May '05 and HL opened case 96970 8-19-05. No disposition noted; case destroyed 1-16-08	2
28	115705	Complainant alleged she was the subject of an investigation; no UPA	Agree			
29	115811	Counseling statements are not UPA; they are not included in permanent file	Disagree	PC was complaint to local IG; UPA was threat of ending career. LOC is a UPA.	Why was this referred to Army IG on 7-28-10? What was the disposition? This appears open; why part of Population 1?	1
30	116034	Complaint is vague; insufficient evidence of reprisal	Disagree	PC was a substantiated IG complaint; UPA was an LOR and threat. We agree the complaint lacks information, but it should be dismissed at this stage; Complainant needs to be interviewed and more information obtained.		1, 2, 3
31	116063	No new information from previous July '09, complaint warranting reconsideration. Does raise concerns about FEB and racial discrimination; however these don't fall under 10 USC 1034	Agree	Agree; however, previous complaint should have been summarized since it was basis for decision.	Unnecessary narrowing of statute by determining FEB and racial discrimination don't fall under it.	
32	116175	No allegation of reprisal. MHE reviewed by Marine IG and found to be in compliance. No new information warranting relook	Agree		On 8-30-10, HL received and email from Complainant requesting reconsideration; no evidence it was ever acknowledged; replied to, or that MRI was notified	
33	116186	PC after UPA; insufficient evidence of reprisal.	Disagree	PC 7-15-10 email to chain of command; UPA 7-19-10 training hold and LOC for a prior incident		1, 3, 4
34	11678	No UPA; Complainant is concerned about threat of future UPA. If they occur, resubmit with documentation	Disagree	PC April '10 reporting Commander for violation of JFTR; UPA multiple LOR starting 4-27-10 and threat of early release		1, 2
35	116181	AMC IG reviewed this and determined PC was after UPA; Complainant was relieved of Command for cause triggering COR OER	Agree		HL appears to have made independent decision on Complainant's supplemental submission w/o consulting MRI	
36	116307	No PC. Tour was not extended due to not attending training	Agree	"I don't want to be transferred" is not a PC.		
37	116062	Initially [REDACTED] asked for complete description of PC & UPA. Then [REDACTED] determined no UPA; if Complainant gets fired, he should resubmit	Disagree	PC April/May '10 reporting misconduct; UPA threat of being fired		2
38	115944	UPA does not fall under statute; not filed timely. If Complainant is REFRADed, she should resubmit	Disagree	PC is Sep '09 EO complaint and Apr '10 Congressional; UPA is threat of REFRAD		2
39	116683	Same complaint as previous, 116333; already declined	Disagree	Previous complaint had a PC followed by a UPA and should have proceeded. MRI agreed, but determined the UPA to be justified; not appropriate for this stage	Previous complaint filed by Complainant; this time a referral from FBI/DCIS	4
40	113071	Need to provide clarification and documentation to support this complaint	Agree		Concerned HL waited 1 1/2 months before requesting more info and then closed it three weeks later.	

Declination

41	113951	Need to clarify employment status and provide documentation regarding UPA/PC	Disagree	Agree complainant didn't provide everything asked for, but he was still trying when it was closed.	1-3-10 MRI tells HL to get info. HL informs C, replies meeting or fax info? 4-1-10 HL seemingly ignores 3-18-10 email and re-sends 3-14-10 email; 4-1-10 (three hours later) C replies answering some of the questions asked by MRI	3-14-10 3-18-10 C 4-1-10 HL 4-1-10 (three hours later) C 3
42	113952	Need to provide documentation regarding UPA/PC	Disagree	PC was reporting "something" to chain of command; UPA was threats	Documentation is not REQUIRED at this stage.	2, 3
43	113980	Need to clarify reprisal allegation with details/documents. MRI will not address UPA before Sep '09 or military medical issues	Disagree	PC was complaining to chain alleging discrimination based on religion/national origin; multiple UPAs were provided with specificity.		3
44	114269	Need to provide copies of counselings, documentation of Admin Discharge, and copies of appeals w/ Command response	Disagree	PC was substantiated Feb '09 complaint to local IG and Aug '09 IG complaint; UPA was Dec '09 adverse NCOER and attempt to discharge	HL 112040 Aug '09 Complainant alleged reprisal after IG complaint; MRI declined stating counselings were not UPA	3
45	114773	Need to provide documentation regarding UPA/PC	Disagree	PC was EO complaint; UPA was disciplinary review board and negative counselings. Specific dates and names were provided in complaint.	On 5-5-10, Complainant replied to a HL email; no evidence it was acknowledged or that HL responded.	3
46	114866	Need to provide dates, copies of adverse actions, and copy of EO complaint	Disagree	PC was EO complaint; UPA was verbal and then written counseling and pending UCMJ action		3
47	115003	Need to clarify exactly what UPAs have occurred and provide documentation; also need to send copy of IG complaint	Disagree	PC was report of wrongdoing to supervisor and then higher chain of command; UPA was being fired and transferred to a lower position	Agree dates were not provided, but Complainant was deployed to a war zone; he met the burden for the initial stage. Sending a single email and then closing it due to nonresponsiveness isn't right.	3
48	115238	Need to provide documents and details (dates) of his letter to Congress and the UPAs	Disagree	PC was letter to Congress; UPA was demotion and preparation of separation paperwork		3
49	115903	Need to provide documents regarding PC, MHE, and any other UPA	Disagree	PC was report to command; UPA was MHE referral	Complainant stated in his complaint he was deployed and having connectivity problems, yet this was closed after sending only a single email requesting documents	3
50	115863	Need to clarify allegations and provide supporting documentation of counseling statements, feedback and copy of NCOER	Disagree	PC was report of hostile work environment to DoD IG; UPA was perceived adverse NCOER and threat of downgrade of NCOER		3
51	115932	Need to provide full description of PC; documentation/full description of alleged mismanagement/abuse of authority; identify actions taken by each RMO; describe/provide documents of UPA; status of 15-6; status of OER w/copy if signed; and status of employment	No decision	There is no closure date listed in file. If this is still open, why is it in Population 1	The request for all this documentation seems excessively burdensome and not necessary IAW statute	
52	116073	Need supporting documentation regarding MHE (names, medical records, witness statements) and documentation for any alleged UPA. Also documentation of Police or EO report	No decision	This is open and active. [redacted] initially declined (see info to left) but Deese appears to have overruled and sent referred the MHE portion to DMAIG (which is contrary to her written remarks stating that MRI would accept MHE and everything else would be referred.	What is the disposition of the non-MHE portion?	

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** Categories for Disagreement					
1	Letters of reprimand, counseling, and instruction that were issued after a PC was made, and held locally, were not considered UPAs by MFI.				
2	Cases were declined because a service member only received a threat of an unfavorable personnel action, or could challenge an underlying action in another forum.				
3	Cases were declined for lack of documentation or details submitted by the service member supporting the allegation of a protected communication or unfavorable personnel action.				
4	Other				

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Sheet #	Hotline #	Reason for Closing	Agree / Disagree	Review Team Reason	Other	**Categories for Disagreement
1	H091.108244	Insufficient evidence; no adverse info in permanent file	Disagree	Can't assume why RMO took action w/o interview	MRI opined 15-6 was basis for dismissal, but never asked	2
2	H081.108386	UPA preceded PC and had independent basis	Agree			
3	H091.108668	Insufficient evidence UPA was linked to PC; Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview	Repeatedly asked Complainant to prove RMO knowledge of PC	2
4	108982	Referred for full investigation	None			
5	109800	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview	LOC was a UPA	1, 2
6	109835	Complainant request	Agree			
7	109968	No UPA	Disagree	LOCs are UPA; need to talk to RMOs		1, 2
8	109991	No UPA	Disagree	OER was a UPA; need to talk to RMOs	NATO job lost due to OER	2, 4
9	110114	Independent basis for UPA	Agree			
10	110513	Independent basis for UPA	Agree			
11	111354	Currently being investigated	None			
12	112090	Independent basis for UPA	Agree			
13	112447	Referred for full investigation	None			
14	112479	No PC	None	Contractor, not subject to 10 USC 1034		
15	112499	Referred for full investigation	None			
16	112526	Sent to AF for Preliminary investigation	None			
17	112914	Independent basis for UPA	Agree			
18	113258	No UPA	Disagree	Loss of job certification is a UPA; need to talk to RMOs		2, 4
19	113264	No PC	Disagree	Reported abuse; should have determined what the abuse was	Counseling statement shows Restriction --not addressed	4
20	114699	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview		2
21	114744	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview		2
22	115448	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview	Early redeployment is a UPA	2, 4
23	115591	Referred for full investigation	None			
24	115973	Rebuttal actively being worked by MRI & OGC	None			
25	WB 2009-151	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview	Bias was found, but not addressed	2
26	WB 2009-158	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview	Restriction was found, but not addressed	2
27	WB 2009-197	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview	Reduction in rank could have been done in 2005, but didn't occur until just after PC	2
28	WB 2009-200	No UPA	Agree	Complainant's alleged UPA wasn't, however there was an Art 15 which is a UPA	What is the IG's obligation to address issues not alleged by complainant? Allegation of criminality should have been reported/referred	

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29	WB 2009-220	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview		2
30	WB 2009-259	Independent basis for UPA	Agree		Telling complainant they need to have a perfect record is wrong	
31	WB 2009-288	Negative counseling are not UPA because they are filed locally	Disagree	LOCs are UPA; need to talk to RMOs		1, 2
32	WB 2009-308	MHE followed proper procedures	Agree			
33	WB 2009-324	Independent basis for UPA	Agree			
34	WB 2009-362	MHE followed proper procedures	Agree			
35	WB 2009-364	Article 15 was for actions prior to PC	Disagree	Article 15 was issued after PC; need to talk to RMO		2, 4
36	WB 2010-003	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview	Complainant failed standards for years; UPA taken right after PC	2
37	WB 2010-022	No UPA	Disagree	Can't assume why RMO took action w/o interview	Out of cycle, short notice PCS right after PC could be reprisal	2
38	WB 2010-055	Complainant would not provide consent to release info and pulled complaint	Agree	There was substantiated restriction that was not dealt with	Can the complainant shut down an investigation when there is a clear violation?	
39	WB 2010-063	Independent basis for UPA	Agree		Why did it take over a year to get to MRI?	
40	WB 2010-071	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview		2
41	WB 2010-072	Documented intent of UPA prior to PC	Disagree	LOC was not considered; RMO never talked to		1, 2
42	WB 2010-114	Untimely	Agree			
43	WB 2010-150	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview	One of the statements confirmed reprisal	2
44	AF 2005-125	Admin closed; MRI previously declined during a PI; UPA not part of official record	Disagree	Unable to determine based on information in file	Five year old case?	3
45	AF 2006-054	No UPA	Disagree	Unable to determine based on information in file	How can they determine TDY is not a UPA with no information about TDY?	3
46	AF 2006-016	Independent basis for UPA	Disagree	RMO attributed move to IG complaint	"Follow your chain of command or pay the price"	1, 4
47	AF 2008-247	No UPA	Agree	Disagree with MRI's reasoning; but there was independent basis for UPA	LOC was a UPA	
48	AF 2008-284	Independent basis for UPA	Agree			
49	AF 2009-170	Independent basis for UPA	Agree			
50	AF 2009-273	Independent basis for UPA	Agree			
51	AF 2009-275	Independent basis for UPA	Agree			
52	AF 2009-290	Independent basis for UPA	Agree			
53	AF 2009-297	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview		2
54	AF 2009-298	No UPA	Agree			
55	AF 2009-303	No UPA	Disagree	Can't assume why RMO took action w/o interview	"Accept LOC or resign" w/field quarterly award	1, 2
56	AF 2009-306	Independent basis for UPA	Agree	MRI opined an LOC was not a UPA; we disagree		

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57	AF 2009-316	No PC (MRI disagreed, but thought there was an independent basis for the UPA)	Agree				
58	AF 2009-318	PC did not impact RMOs	Disagree	Can't assume why RMO took action w/o interview	What does "PC did not impact RMO" have to do with anything?		2
59	AF 2009-325	Independent basis for UPA	Agree				
60	AF 2009-334	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview			2
61	AF 2009-345	MHE due to early return and info from previous Commander Independent basis for UPA	Disagree	Unable to determine based on information in file	No information in file related to reasoning for MHE referral		3
62	AF 2009-348	Independent basis for UPA	Agree	LOR is UPA; MRI stated it isn't because it doesn't follow to next unit	Complainant is an ANG member; there is no "next unit"		1
63	AF 2009-355	Independent basis for UPA; LOR not a UPA	Disagree				
64	AF 2009-372	Complainant withdrew complaint	Agree		Not investigated in a timely manner		
65	AF 2009-380	Independent basis for UPA	Agree				
66	AF 2010-026	RMO not aware of PC and Independent basis for UPA	Disagree	RMO admitted knowledge of PC and IO suspected RMO credibility			4
67	AF 2010-030	Independent basis for UPA	Agree				
68	AF 2010-048	No PC; Independent basis for UPA	Agree				
69	AF 2010-062	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview			2
70	AF 2010-104	No PC; no UPA; UPA prior to PC; not submitted timely	Agree				
71	AF 2010-127	No UPA	Agree	Disagree with MRI's reasoning; but there was Independent basis for UPA			
72	AF 2010-142	Independent basis for UPA	Agree				
73	AF 2010-145	Independent basis for UPA	Agree				
74	AF 2010-146	Independent basis for UPA	Agree				
75	AF 2010-153	No PC	Agree		recused himself		
76	AF 2010-157	Independent basis for UPA	Agree				
77	AF 2010-179	RMOs not aware of PC	Agree				
78	AF 2010-189	Independent basis for UPA	Agree				
79	AR 2003-147	Complainant no longer on AD	Agree		Not investigated in a timely manner PC was in 2002, UPA was Jan 2003		
80	AR 2005-055	Same allegation as SIRC 2005-128 which is still open	Disagree	Unable to determine based on information in file	The file was from 2005		3
81	AR 2006-245		Removed		Referred for full investigation		
82	AR 2008-081		Removed		Referred for full investigation		
83	AR 2008-099	Complainant request	Agree		Complainant unable to provide documentation in requested format, so withdrew request		
84	AR 2009-313	Investigation not UPA; no allegation of PC based adverse action	Disagree	Unable to determine based on information in file	ISO CASE		3
85	AR 2009-314	Independent basis for UPA	Disagree	Unable to determine based on information in file	ISO CASE		3
86	AR 2009-375	Complainant request	Agree		Not investigated in a timely manner		

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87	AR 2010-010	Lack of credibility of Complainant	Agree				
88	AR 2010-089	Uncooperative Complainant	Agree				
89	AR 2010-121	UPA preceded PC and had independent basis	Disagree	Unable to determine based on information in file	ISO CASE		3
90	NV 2008-266	No UPA	Disagree	Threat of dismissal is UPA			4
91	NV 2008-267	Duplicate of SIRC 2009-293; no UPA	Disagree	Unable to determine based on information in file			3
92	NV 2008-325	Independent basis for UPA	Agree				
93	NV 2009-153	Independent basis for UPA	Agree				
94	NV 2009-245	Independent basis for UPA	Disagree	Can't assume why RMO took action w/o interview	Would have agreed if RMO action had been explained by RMO and not 3rd party		2
95	NV 2009-296	No PC	Agree	MHE issue not addressed			
96	NV 2010-023	Resolved internally; formal inquiry initiated	Agree	UPA preceded PC			
97	NV 2010-087	No UPA; independent basis	Disagree	Can't assume why RMO took action w/o interview			1, 2
98	NV 2010-173	UPA preceded PC and had independent basis	Agree				
		** Categories for Disagreement					
		1	Letters of reprimand, counseling, and instruction that were issued after a PC was made, and held locally, were not considered UPAs by MRI. MRI declined to further investigate cases without obtaining a statement or any facts directly from the responsible management official. The record or case file was not fully developed.				
		2					
		3					
		4					
			Other				

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Full Investigation

Spreadsheet #	Case #	Agree / Disagree	Notes	Other	**Categories for Disagreement
1	110658	Agree		Very old; PC - 2002 & UPA 2003	
2	110729	Disagree	Record not fully developed	Justified action base on advice from JAG, JAG never interviewed. states JAG opined MHE referral not appropriate email states it was an option	1
3	112066	Disagree	Record not fully developed	RMO "chose" not to be interviewed. RMO needs to be interviewed. AF had changing legal opinions re: sufficiency; IG OGC should have been consulted	1
4	112530	Agree	However, MRI should have forwarded to OGC for legal opinion		
5	112577	Agree			
6	112740	Agree			
7	112937	Agree			
8	113110	Disagree	Restriction did not exist	JAW AFI 90-301 it was Restriction	3
9	113335	Disagree	UPAs not considered UPAs	Concur EPR was justified; however, the transfer was a UPA and needed to be addressed	2
10	113345	Disagree	Record not fully developed	IO concluded Unsubstantiated; PACAF and AF IG disagreed and Substantiated reprisal; MRI overruled them and opined it Unsubstantiated. There was not enough information in file to overturn PACAF & AF IG; key interviews not conducted	1
11	113553	Agree			
12	113556	Agree			
13	113715	Agree			
14	113830	Agree	LOC was a UPA and it should have been addressed	No action taken against RMO in spite of substantiation	
15	113831	Disagree	Record not fully developed	Conflicts in RMO testimony not resolved; necessary interviews not conducted; suspension from Command is a UPA	1
16	115209	Agree			
17	115383	Disagree	Record not fully developed	Conflicts in RMO testimony not resolved; file contains only IO summary of interview, not transcripts	1
18	115465	Disagree	UPAs not considered UPAs.	4 LOCs deemed not UPAs; detailed duty assignment not addressed	2
19	115752	Disagree	Preliminary Inquiry		
**Categories for Disagreement					
1	The record or case file was not fully developed.				
2	Actions taken by the responsible management official were not considered UPAs by MRI.				
3	Other				

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